In the High Court of Punjab and Haryana, Chandigarh.

Civil Revision No.5302 of 2006

Date of Decision: 12.10.2007

Prem Kumari Dahiya

…Petitioner

Versus

Gian Parkash

…Respondent

CORAM: HON'BLE MR.JUSTICE RAJESH BINDAL

Present: Mr. Raj Kumar Gupta,Advocate
for the petitioner

Mr. Sandeep K. Sharma, Advocate
for the respondent.

RAJESH BINDAL, J.

This is a petition challenging the order dated August 29, 2006 passed by the learned Rent Controller, Rohtak, whereby the application filed by the petitioner-landlord for amendment of the petition was dismissed. The application was dismissed primarily on the ground that there was delay in filing the same and also that the petitioner-landlord could not raise the plea of personal necessity as was sought to be raised by way of amendment.

Learned counsel for the petitioner submitted that though the rent petition was filed way back in the year 1991, however, the tenant was proceeded against ex parte and thereafter even the ejectment petition was accepted. Later on, the ex parte order was set aside and in that process, proceedings remained pending before the higher Courts and it was only on August 14, 2006 that proceedings were re-initiated and immediately thereafter, on August 23, 2006, the application for amendment of petition was filed. Hence, there is no delay. Secondly, he has submitted that the petitioner is well within her right to raise the plea of personal necessity of premises in

dispute. Even otherwise, the merits of the amendment could not be considered by the learned Rent Controller at the stage of consideration of application for amendment.

On the other hand, learned counsel for the respondent submitted that the learned Court below had rightly rejected the application filed by the petitioner-landlord for amendment of the petition relying upon the judgment of this Court in **Dinesh Kumar v. Ram Singh and others 2006(1) PLR 645.** Once the issue sought to be raised by way of amendment is to be decided against the petitioner, there is no use of permitting the amendment.

Having heard learned counsel for the parties, I find merit in the contentions raised by learned counsel for the petitioner. From a perusal of the material placed on record, it is found that after setting aside of ex parte order, it was only on August 14, 2006 that the petition was adjourned to August 21, 2006 for filing of reply by the respondent-tenant. On August 21, 2006, reply was not filed and the case was adjourned to August 22, 2006, on which date, written statement was filed and the case was adjourned to August 23, 2006 for filing of replication and on that day the application for amendment of the petition was filed. Hence, there is no delay. As far as the rejection of the application for amendment, on the ground that the issue sought to be raised is covered against the petitioner-landlord is concerned, I am of the view that the merit of controversy sought to be raised by way of amendment application is not to be decided at the stage of consideration of the application. The same can very well be considered and decided at the time of final decision of the ejectment petition. Acceptance of the application for amendment does not mean that even the issue sought to be raised is also decided in favour of the petitioner on merits.

Accordingly, the revision petition is allowed. The impugned order dated August 29, 2006 passed by the learned Rent Controller, is set aside. The amendment application filed by the petitioner-landlord is allowed.

Parties through their learned counsel are directed to appear before the learned Rent Controller on November 12, 2007 for further proceedings.

(Rajesh Bindal)
Judge

October 12, 2007
"DK"